

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 **At a stated term of the United States Court of Appeals for the Second**
2 **Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley**
3 **Square, in the City of New York, on the 15th day of May, two thousand twenty-**
4 **five.**

5
6 **PRESENT:**

7 **JOSÉ A. CABRANES,**
8 **RICHARD C. WESLEY,**
9 **RAYMOND J. LOHIER, JR.,**
10 *Circuit Judges.*

11 _____
12
13 **LIU BI-TONG,**

14 *Petitioner,*

15
16 **v.**

23-7421

NAC

17
18 **PAMELA BONDI, UNITED STATES**

19 **ATTORNEY GENERAL,**

20 *Respondent.*

21 _____
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1 *Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the agency’s “legal
2 conclusions *de novo*, and its factual findings, including adverse credibility
3 determinations, under the substantial evidence standard.” *Y.C. v. Holder*, 741
4 F.3d 324, 332 (2d Cir. 2013). “[T]he administrative findings of fact are conclusive
5 unless any reasonable adjudicator would be compelled to conclude to the
6 contrary.” 8 U.S.C. § 1252(b)(4)(B).

7 “Considering the totality of the circumstances, and all relevant factors, a
8 trier of fact may base a credibility determination on the demeanor, candor, or
9 responsiveness of the applicant . . . , the consistency between the applicant’s . . .
10 written and oral statements . . . , the consistency of such statements with other
11 evidence of record . . . and any inaccuracies or falsehoods in such statements,
12 without regard to whether an inconsistency, inaccuracy, or falsehood goes to the
13 heart of the applicant’s claim, or any other relevant factor.” *Id.* § 1158(b)(1)(B)(iii).
14 “We defer . . . to an IJ’s credibility determination unless, from the totality of the
15 circumstances, it is plain that no reasonable fact-finder could make such an
16 adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.
17 2008); accord *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018). Substantial
18 evidence supports the agency’s determination that Bi-Tong was not credible as to

1 his claim that he was arrested and beaten for attending an underground church.²

2 The IJ may rely on “demeanor, candor, or responsiveness” in determining
3 credibility, *see* 8 U.S.C. § 1158(b)(1)(B)(iii), and such findings are entitled to
4 deference. “[B]ecause demeanor is virtually always evaluated subjectively and
5 intuitively, we accord an IJ great deference on this score.” *Likai Gao v. Barr*, 968
6 F.3d 137, 149 (2d Cir. 2020) (quotation marks and brackets omitted); *see also* *Li Hua*
7 *Lin v. U.S. Dep’t of Just.*, 453 F.3d 99, 109 (2d Cir. 2006) (explaining that “we give
8 particular deference” to demeanor findings because the IJ is “in the best position
9 to evaluate whether apparent problems in the . . . testimony suggest a lack of
10 credibility or, rather, can be attributed to an innocent cause such as difficulty
11 understanding the question” (bracket omitted)). Here, the IJ observed that Bi-
12 Tong’s testimony on direct examination sounded scripted and conformed closely
13 to his prior statements, and that his demeanor changed on cross-examination,
14 when his answers became significantly more hesitant. The IJ noted for the record
15 multiple long pauses before Bi-Tong provided answers on cross-examination. Bi-

² The agency was not required to—and did not—cabin its adverse credibility determination to past events in China and credit Bi-Tong’s testimony that he would attend underground churches in the future. *See Siewe v. Gonzales*, 480 F.3d 160, 170 (2d Cir. 2007) (“[A] single false document or a single instance of false testimony may (if attributable to the petitioner) infect the balance of the alien’s uncorroborated or unauthenticated evidence.”).

1 Tong does not dispute those observations, and deference is due to the IJ's
2 conclusion that they signaled a lack of candor. *See Debiqve v. Garland*, 58 F.4th
3 676, 684 (2d Cir. 2023) (“We consider abandoned any claims not adequately
4 presented in an appellant’s brief, and an appellant’s failure to make legal or factual
5 arguments constitutes abandonment.” (quotation marks omitted)); *Majidi v.*
6 *Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005) (acknowledging that a “fact-finder who
7 assesses testimony together with witness demeanor is in the best position to
8 discern . . . whether a witness who hesitated in a response was nevertheless
9 attempting truthfully to recount what he recalled of key events or struggling to
10 remember the lines of a carefully crafted ‘script’” (quotation omitted)).

11 The agency also reasonably relied on inconsistencies between Bi-Tong’s
12 testimony and letters from his mother and friend. *See* 8 U.S.C. § 1158(b)(1)(B)(iii).
13 The agency reasonably read Bi-Tong’s mother’s letter as saying she was alerted to
14 his release by written notice, which is inconsistent with his testimony that she was
15 informed by telephone and given the written notice later. *See Siewe*, 480 F.3d at
16 168 (“Where there are two permissible views of the evidence, the factfinder’s
17 choice between them cannot be clearly erroneous. . . . Rather a reviewing court
18 must defer to that choice so long as the deductions are not illogical or implausible.”
19 (quotation marks omitted)). And while we have cautioned the agency against

1 over-reliance on omissions from third-party statements, or an applicant’s failure
2 to explain such omissions, “an omission by a third party may form a basis for an
3 adverse credibility determination.” *Hong Fei Gao*, 891 F.3d at 81. Here, the
4 agency properly considered Bi-Tong’s mother’s failure to mention personally
5 picking him up from detention and seeing his injuries because those are matters
6 his mother “would reasonably have been expected to disclose.” *Id.* at 79.

7 In addition, Bi-Tong submitted a letter dated December 2017 from a friend
8 in China, but testified that he received it in about June 2017. The agency was not
9 required to accept Bi-Tong’s assertion that he was confused. *See Majidi*, 430 F.3d
10 at 80 (“A petitioner must do more than offer a plausible explanation for his
11 inconsistent statements to secure relief; he must demonstrate that a reasonable
12 fact-finder would be *compelled* to credit his testimony.” (quotation marks
13 omitted)). While these inconsistency findings are not overwhelming, the agency
14 noted as much and properly considered them in the totality of the circumstances.
15 *See Xiu Xia Lin*, 534 F.3d at 167 (holding that agency may rely on the “cumulative
16 effect” of minor inconsistencies in reaching an adverse credibility determination).

17 Finally, the absence of reliable corroboration further supports the adverse
18 credibility determination. “An applicant’s failure to corroborate his or her
19 testimony may bear on credibility, because the absence of corroboration in general

1 makes an applicant unable to rehabilitate testimony that has already been called
2 into question.” *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). Regardless
3 of the inconsistencies noted above, the agency reasonably granted little weight to
4 the supporting letters because the authors were unavailable for cross-examination
5 and Bi-Tong’s mother was an interested party. *See Likai Gao*, 968 F.3d at 149
6 (holding that an “IJ acted within her discretion in according . . . little weight [to
7 affidavits] because the declarants (particularly [petitioner’s] wife) were interested
8 parties and neither was available for cross-examination”); *Y.C.*, 741 F.3d at 332
9 (“We generally defer to the agency’s evaluation of the weight to be afforded an
10 applicant’s documentary evidence”). The only other document corroborating the
11 past persecution was a release notice, but the agency reasonably assigned less
12 weight to that document because Bi-Tong did not provide the original or explain
13 why he failed to do so. *See Y.C.*, 741 F.3d at 332; Immigration Court Practice
14 Manual Chapt. 3.3(d)(3) (instructing applicants to file copies with the court, but to
15 bring original documents to all hearings), available at
16 <https://www.justice.gov/eoir/reference-materials/ic/chapter-3/3>. The remaining
17 evidence consisted of identity documents and evidence of Bi-Tong’s religious
18 practice in the United States, and would not have corroborated his claim of past
19 persecution even if granted greater weight.

